House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 023 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, June 10, 2010

Chair

Mr. Ed Fast

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● (1110)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting number 23 of the Standing Committee on Justice and Human Rights. For the record, today is Thursday, June 10, 2010. Today's meeting is being televised.

You have before you the agenda. Today we're continuing with our review of Bill C-4, Sébastien's Law, an act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other acts.

To help us with the review, we have a number of witnesses. First of all, representing the New Brunswick Office of the Ombudsman, we have Bernard Richard.

We also have the Canadian Coalition for the Rights of Children, represented by Katherine Vandergrift.

We have the Institut Philippe-Pinel de Montréal. Representing them is Cécile Toutant.

We have New Brunswick Association of Social Workers, Miguel LeBlanc, as well as Merri-Lee Hanson.

Welcome to all of you.

You have ten minutes to present per organization, and then we'll open the floor to questions.

Would you start, please, Monsieur Richard?

[*Translation*]

Mr. Bernard Richard (Ombudsman and Child and Youth Advocate, New Brunswick Office of the Ombudsman): Thank you very much, Mr. Chairman. I'm of course pleased to be taking part in this meeting and in your proceedings on Bill C-4.

I previously sent you a written submission, a brief, and I don't intend to read it or even provide an overview of it. I'm simply going to summarize my concerns about the bill, in order to allow my colleagues as much time as possible and to speak with committee members.

[*English*]

I just want to give you some background, if I could, on the work we do so that you know where we're coming from.

I'm a child and youth advocate, as well as the ombudsman in New Brunswick, and for the time being the Access to Information and Privacy Commissioner as well. Hopefully, there will be a separate Access to Information and Privacy Commissioner soon.

Since about November 2006, I've been dealing with individual cases of youth and children, including youth who have been dealing with the Youth Criminal Justice Act and the justice system. So we have a very hands-on experience day in and day out. I have a number of people who work with me—some lawyers, some social workers, and others as well, with different areas of expertise. We intervene in different cases. We participate in case conferences and meet with families and the youth themselves. So it's very much an on-the-ground experience.

As well, we've published two reports fairly recently. Two years ago we published one report called *Connecting the Dots*, which really focused on youth with mental health issues and severe behavioural disorders and the experiences they and their families had with the service providers in New Brunswick. We made a series of recommendations. We followed seven youth and their families. The youth suffered from various ailments, including bipolar disorder, autism or autism spectrum disorders, and schizophrenia. Sadly, one committed suicide. But we followed the others over two years. We met with their families and we published a report with recommendations.

We also spent quite a bit of energy and resources reviewing the three years that Ashley Smith—whom you would be familiar with—spent in our New Brunswick Youth Centre. She spent three years in and out—mostly in—the New Brunswick Youth Centre. We reviewed 6,000 pages of documents and 40 hours of video. I assigned five investigators to that specific case. Tragically, as you know, she died in the federal system, but a lot of the issues there were very similar to those in the provincial system.

During those three years, Ashley spent two-thirds of her time in segregation—that is, in solitary confinement in an eight-by-ten cell, 23 hours a day more or less, with lights on 24 hours a day. If she didn't suffer from mental illness when she went in, she certainly did when she came out—and I would have, as well, Mr. Chairman, with respect.

She faced 501 institutional charges during those three years and 70 criminal charges during her lifetime, more than half for incidents inside the institution, not outside. She had 168 self-harm incidents, and she was tasered twice as a youth before she reached the age of 19 in an adult prison while waiting for transfer to a federal institution.

In that report, we made 25 recommendations.

I think we have a fairly good idea or view of how the system works on the ground. It's on that basis that I accepted your invitation to appear.

I know there is a broad range of opinions on the Youth Criminal Justice Act. In fact, in one meeting I heard it described that the Youth Criminal Justice Act, depending on your perspective, might stand for "you can justify anything", YCJA, or "you can't jail anyone". I think I'm situated somewhere outside of both of those definitions, but certainly, what I hope we know for sure is this. It's a new piece of legislation. It was meant to address a situation under the Young Offenders Act where Canada had the highest rate of youth incarceration in the world, I'm told. It was extremely high, in any event. At least today, it has worked. According to the research of Nicholas Bala and others, the trend is now definitely towards a reduction of youth crime. There is, as well, a reduction of youth incarceration. That translates to savings, savings financially, obviously, but also savings in emotional costs to families. All of these youth are somebody's son or daughter.

● (1115)

This experience, to me, is still early. It's been seven years in the lifetime of a piece of legislation. Recently I've been working with the Indian Act, which is much older than that; but seven years is a very short time, and I'm very concerned that these changes are premature.

There was a significant consultation in 2008. I participated in it and met Minister Nicholson in August 2008 in New Brunswick. I know that my participation was a small part of the participation nationwide. I have yet to receive the results of that consultation. I think it would be critical information for members of the committee to have access to that. It's hard for you to decide on a piece of legislation without knowing what thousands—well, certainly hundreds—of Canadians had to say about it. The session I attended in Moncton included police, psychiatrists, social workers, and prison guard associations. It was a really diverse group of people, and they had a lot to say. I think you would be very well advised to take advantage of that. Personally, I can say that I know there have been written reports, but none have been published. So I'd love to be able to see what was said during all of those consultations. There was a consultant hired to write a report and to facilitate the sessions. His name was Roger Bilodeau.

As well, we haven't done a really good job of making full use of the Youth Criminal Justice Act. I think that's because it's still a very young piece of legislation.

[*Translation*]

In the case of New Brunswick, for example, the part of the act that permits the use of case conferences is really not used very much.

Justice Canada recently asked my office to conduct an analysis of the use of the act in New Brunswick to establish a model that would enable us to make better use of the elements that already exist but that are not very well known as a result of the recent nature of the act.

It seems to me we should further explore the opportunities afforded by the act as it currently stands before proceeding with changes that are quite significant.

I won't into the details because my main argument is that we are going way too fast. Instead we should analyze what has already been done and determine whether that's working or not. What interests committee members and the Canadian public, in my view, are the results at the end of the process.

[*English*]

What interests us are outcomes, very real concrete outcomes. So if you don't have the benefit of a complete analysis of what's happened so far under this piece of legislation, I think you take the risk of taking us back in time to the Young Offenders Act, the high incarceration rates, and here we go all over again. That is the concern I am expressing to the committee.

I have a lot of sympathy for Sébastien and his family and for others who are victims of crime. As ombudsman, I often am called upon to advocate on their behalf as well. My concern when I saw it was that it's a very tragic story. But by calling it "Sébastien's Law", I guess the question I ask myself is when will we have "Ashley's Law", a law for those who are victims of the criminal justice system? Ashley cried out for help and she became progressively worse while in contact with the system.

There are thousands of young Canadians out there who suffer from mental illness, from severe behaviour disorders, from addiction, who come in contact with the criminal justice system, and they should be diverted, directed towards treatment, not incarceration. Inevitably, incarceration makes their conditions worse. The justice system, including the prison system, is just not equipped to deal with these kinds of youth.

My fear is that while driving more of these youth towards incarceration, we're actually taking youth who are confused, sometimes suffering from all kinds of conditions, or who just make errors in judgment.... And I would say that outside of this room, likely most youth make errors of judgment sometimes, but not as severe as.... I know I have. Although I said "outside of this room", I can confess that as a teenager.... And I have four sons who have been teenagers, and I am happy they're adults now, but they have made their own mistakes, yes.

I'll close on that, Mr. Chair.

I would ask you to carefully consider looking at where we've come from. I'm afraid that if we look at high-profile cases of violent crime by youth in order to change what I think is groundbreaking, very progressive legislation, we're proceeding on the wrong basis and we'll have the wrong results. That's my concern.

Thank you, Mr. Chair.

● (1120)

The Chair: Thank you.

We'll move on to Ms. Vandergrift for ten minutes.

Ms. Kathy Vandergrift (Chairperson, Board of Directors, Canadian Coalition for the Rights of Children): Thank you very much for this opportunity.

I will be highlighting points from the written submission that I believe you have in front of you, and I would certainly invite questions on the other content in the submission as well.

Bill C-4 is named Sébastien's Law to remember a young person killed by another young person. But we also need to remember other children, like AB and Ashley Smith. AB is the child at the heart of the Nunn commission, which weighs into this bill. He was a boy with learning disabilities who spiralled out of control, to use the words of the commission, and then came to public attention when he killed a woman while he was joyriding in a stolen car. You heard just now more of the details of Ashley Smith, a girl suffering from mental health issues who died in federal custody.

What they had in common was that they were adolescents who got involved in criminal activity after they fell through the cracks of underdeveloped, sporadic, or poorly coordinated services for children in need. That's the primary challenge for Canada at this time. Young people within the system told that to members of Parliament directly in a forum we sponsored in 2007. If you were to see the report of the consultation, we are sure you would see that early intervention is a primary message. Several of our members participated in those sessions across the country, and we hope you will insist on seeing the report from those.

I'm raising this because Bill C-4 does very little to address our primary concern in relation to youth justice in Canada.

One of the ways of being sure we balance the various interests is to look at what the Convention on the Rights of the Child has to say about youth justice. That is going to be our primary contribution to the review of Bill C-4, so I'd like to look at various aspects of that bill in relation to the convention, which Canada ratified in 1991.

First of all are the basic principles. Protection of the public, which was recommended by the Nunn commission, can be accommodated without revising the other basic principles. I submit to you that the revisions proposed in Bill C-4 change the approach to accountability and change the primacy of prevention in ways that are contradictory to the Convention on the Rights of the Child and are not in keeping with the whole Nunn commission report. If you read the whole report, you could see adding protection of the public without changing the other principles. That would be the recommendation of the Canadian Coalition on the Rights of Children.

We appreciate one good point in Bill C-4: the recognition of the "principle of diminished moral blameworthiness or culpability", as the Supreme Court ruled. However, there is another principle that the Supreme Court is now recognizing, which your committee should consider, and that is "the best interests of the child".

In the Supreme Court ruling on Omar Khadr, the justices found that the "best interests of the child" are a matter of fundamental justice in Canada. We are suggesting that this principle also be added as a primary principle for the youth justice system.

In 2003 Canada was asked by the UN Committee on the Rights of the Child to integrate the best interests principle in its revision of domestic laws that have an impact on children. Last year Canada made a commitment at the UN Human Rights Council to improve its implementation of its international obligations. This is a good opportunity to do so.

The current YCJA refers to the convention in the preamble and the best interests in one article. We would suggest that the best interests of the child should be made a primary consideration for all decisions relating to children in the youth justice system.

Moving on to pre-trial detention, the convention—and when I say "convention" here, I mean the Convention on the Rights of the Child—has very specific provisions relating to detention. It uses two tests: it should be the last resort and for the shortest time possible. I submit to you that the wording of the criteria in Bill C-4 and the definition of concepts like "serious offence" fall short of meeting those criteria.

● (1125)

In 2007 the government responded to a major study on children's right by saying that every piece of legislation is reviewed for being consistent with the convention. My suggestion to you is that the committee ask to see the analysis that was done of Bill C-4 in relation to the Convention on the Rights of the Child. If a thorough analysis were done, I suspect that you would find recommendations for more precise wording of the criteria that should apply for pre-trial detention.

A second area of concern is the uneven quality of services provided to young people in detention centres across the country. We would suggest that this should also be addressed as you review that portion of Bill C-4.

Turning now to sentencing principles, no evidence has been presented to show that deterrence is an effective strategy for young people. Adding denunciation is not consistent with the recognition of the reduced moral blameworthiness and culpability of young persons. We suggest those be deleted.

The fourth area we want to address is treatment of extrajudicial measures and sanctions. These are elements in the YCJA that are actually working well now and are helping to get early appropriate intervention that helps redirect young people. The provision suggested in Bill C-4 would result in counterproductive delays and added regulations to that. We suggest that you leave well enough alone in terms of extrajudicial measures and sanctions and not incorporate them, on the grounds that these moves would be counterproductive to the objective of early appropriate intervention with young people who get in trouble with the law.

The fifth area is adult sentences for young offenders. Another good piece of Bill C-4 is putting the onus back on crown prosecutors rather than on the defendants of young people, but requiring crown prosecutors to consider adult sentences for all violent offences and report why they are not recommending them is an unnecessary complication to the current act. Leaving that as discretion is a better way to get what is the highest goal, which is early and appropriate treatment rather than adding complications that are likely to result in delays. We would also like to highlight that allowing provinces to set different ages for consideration of adult sentences contravenes the basic provision of equitable treatment for all children under the Convention on the Rights of the Child.

In 2003 Canada was asked by the UN committee to review how it ensures equitable treatment in a number of areas. It's a request that has not yet been addressed in Canada's third and fourth report to the committee. The federal government bears the obligation of ensuring equitable treatment of children across the country. That needs to be part of Canada's commitment to improve its implementation of international obligations. Parliament should not now pass a law that further enshrines inequitable treatment. In 2003 the UN committee recommended that Canada amend its youth justice law to ensure that no person under 18 is tried as an adult.

We make specific recommendations that are in line with the Convention on the Rights of the Child. The sixth area we want to address is the place of detention. Again, a good aspect of Bill C-4 requires that youth serve their sentences in youth facilities. We would just add that there should be some requirements as to what constitutes a youth facility. The convention says that it must take account of the needs of persons of his or her age. That's not always true in the facilities across Canada. Right now, there are really no guidelines for that.

The final area is publication of names. We appreciate again that Bill C-4 is complying with the Supreme Court judgment about the onus of proof in the publication of names, but we would ask for review of this provision in light of the Convention on the Rights of the Child, paragraph 40(2)(b), which states that every child has a right to have his privacy fully respected.

Finally, our submission lists for you the recommendations that the UN committee made to Canada in 2003. When you finish with Bill C-4, I hope this committee will take the time to consider what has been suggested to Canada and look at how we can improve our youth justice system to be in line with developing international standards.

● (1130)

Thank you.

The Chair: Thank you very much.

We'll move on to Miguel LeBlanc. You have ten minutes.

Mr. Miguel LeBlanc (Executive Director, New Brunswick Association of Social Workers): Yes, thank you.

I want to take this opportunity to thank you, on behalf of the New Brunswick Association of Social Workers, for inviting us to make a presentation to this committee on the Youth Criminal Justice Act.

I'm Miguel LeBlanc, the executive director of the NBASW, and with me is Merri-Lee Hanson, who is on our board of directors but is also a mental health social worker.

We have two mandates. One is a regulatory function in the protection of the public, so we control the social work practices in New Brunswick. The other one is the promotion of our profession in the sense of promoting the role of social workers, but also advocating and providing our recommendations to such social policies and legislation.

We have a current membership of 1,600 social workers in New Brunswick. I think it's fair to say that social workers, not only in New Brunswick but across Canada, recognize that working with young people is a challenging job. However, social workers also recognize that young people have the best opportunity to be reintegrated in the community and become productive members of the community. So we were very concerned when we started reading some of the amendments changed in the Youth Criminal Justice Act.

What I'm going to do is talk a bit about some of our concerns, and then I'll pass it on to my colleague, who will talk about some of the ideas on how we can actually improve.

We're concerned regarding the publication of the names of young offenders. We have great concern about these clauses. The intent of including and expanding the possibility for the elimination of the publication ban of young persons is not in the best interests of the community and the young person. Accepting this amendment will further ostracize and impede the process of rehabilitating and reintegrating young offenders.

Once they serve their sentence, we have to ask ourselves how we can honestly expect that these young people will be able to become reintegrated in the communities when all their information is made public. Accepting this amendment will only compound the issues that will minimize the youths' ability to rehabilitate and reintegrate in their communities. The fact of the matter is that we need these individuals to become part of the community.

The statement on page 14 of the legislative summary of Bill C-4 states that the court must then consider the public interest and the importance of the young person’s rehabilitation. We tend to argue that focusing on the importance of the young person's rehabilitation and reintegration is in the public interest.

Regarding youth not serving time in the adult facilities, we do commend this clause. We do believe that young people are not supposed to be in adult facilities. One of the issues, though, that we want to caution is that if you decide to go with this, I'm not convinced as of yet that all of the resources—both infrastructure and for the services—are in place in our province in that case. It will need some financial commitment on the part of the federal government. So we do appreciate that it's there, but if you do that, guarantee that funding and dollars are put back in the province.

Regarding denunciation and deterrents, we understand the objective of clause 7, but we have to remember we're talking about 12-year-old to 17-year-old people. It's generally accepted that youths don't have the same emotional maturity as adults, so understand that the consequences and repercussion of certain actions is not the same as with adults. I mean, that's point blank. We've all been young people.

So we tend to believe and argue that the reason is that we need to examine solutions as to why young people are committing crimes. This means that we need to start looking at more prevention-based efforts. But in the case of young people who do commit crimes in serving a sentence, we need to provide appropriate means to be reintegrated. That requires services—from our perspective, social workers, but also other health professionals.

● (1135)

What I find interesting is that the crime rate across Canada is actually dropping both for non-violent and violent crime, so I can't seem to understand the reasoning in enforcing more punitive approaches instead of providing greater flexibility in services.

I would dare say that the majority of social workers in New Brunswick and across Canada are concerned about some of the amendments that are being made. As the Canadian Bar Association argues, these changes will just increase the number of young people in jail, so why not use this investment and put it back into the community?

The public interest here is the long-term reintegration of these young people back into the community. The goal is that they will become productive members of the community if we provide them with the services. That is the basic idea that we want to put forth.

Now I will pass it on to my colleague, who will talk on how youths can actually become productive members.

Ms. Merri-Lee Hanson (Social Worker, New Brunswick Association of Social Workers): Good morning.

The NBASW agrees with the federal government that young offenders must be accountable for their actions; however, there are challenges to incorporate accountability mechanisms with a balanced and fair approach that incorporates processes that will prevent crimes from happening—

The Chair: Ms. Hanson, could you slow down a little bit?

Ms. Merri-Lee Hanson: Sure.

And when crime does happen, we need to know how we can rehabilitate and reintegrate the young offenders once they have served their sentences. The NBASW recommends that there be a renewed investment in community-based preventive approaches. It is generally accepted that the more you spend at the beginning on prevention efforts, the more the benefits in the long term will surpass the initial investments.

Second, the NBASW recommends that greater investments be made in treating young offenders with mental health and/or substance abuse issues. For example, I strongly urge the committee to examine the Ashley Smith report by respected child and youth advocate Bernard Richard.

The Honourable Rob Nicholson reported that Bill C-4 is a balanced approach that includes elements of prevention, enforcement, and rehabilitation; however, as we discussed previously, the NBASW believes that amendments in some areas, and specifically those on rehabilitation, are insufficient.

As a social worker, I work with vulnerable people in our community. This is the nature of our health profession. In their approach to necessary legislation, social workers strive to provide a balanced approach that considers all factors of an individual's adherence to the laws that guide how we live as Canadians. The Nunn report is often referred to as one of the guiding forces of the amendments being put forward. Mr. Nicholson himself stated, however, that this bill goes considerably beyond what was in the Nunn report. He has stated that this bill is directed towards a certain type of individual and a certain type of crime. Front-line social workers are concerned that those towards whom this bill is not specifically directed will suffer the consequences of a more punitive approach.

It is important to see that this amendment will not address the impulsivity of young persons or their intellectual capacity to see and predict the consequences of their actions. Since the inception of the Juvenile Delinquents Act, the early history of youth justice in Canada has stressed the importance of seeing a young person not as a criminal, but as a misdirected individual. The focus has been on considering the factors that contributed to criminal behaviour rather than on punishing the youth. Although this has moved toward a more balanced and judicial approach over the years, the move towards utilizing denunciation and deterrence turns its back on considering those social factors that so often play a role in youth criminal activity.

We must retain the consideration that because of their lack of maturity, young people require special considerations. We must be able to get young people's attention in order to create an environment for change. It is important to recognize that it is extremely rare that a punitive approach to poor behaviour creates change. There are no skills taught by incarceration.

Owing to individual factors, a small cluster of youth will respond to the recommendations being made; however, that does not take into account the real reasons young people often get involved in the criminal justice system in the first place, which include family conflicts, mental health, and/or developmental difficulties or trauma.

Recommending the use of denunciation and deterrence in the Youth Criminal Justice Act goes against what mental health and child advocates work for day in and day out across this country. Social workers often speak of stigma, the stigma of living in poverty or of having a mental illness; in this case, it is the stigma that comes with involvement in the legal system. By making amendments that may potentially increase the undesirable effects of the youth criminal justice system on young people, we are not creating a system focused on rehabilitation.

In the end, I want to caution against the development of legislative changes that are based on extreme cases. The case of Sébastien, for whom the bill is named, illustrates my point. Using this extreme case to name such a bill promotes emotions rather than a debate of the merits of the amendments. I believe the development of social and economic policies needs to be debated from a perspective that is sound and balanced, but using extreme cases to advance the rationale for changing the Youth Criminal Justice Act, as seems to be happening in this situation, will not result in good legislation.

Again, on behalf of the social workers of New Brunswick, I want to thank you for taking the time to listen to our recommendations.

● (1140)

The Chair: Thank you very much.

Now we'll move on to Ms. Toutant.

[*Translation*]

Ms. Cécile Toutant (Criminologist, Youth program, Institut Philippe-Pinel de Montréal): I'd like to start by asking you a question. I submitted a brief, but I would like to start with a different question. I'm looking at you, and I don't think I'm wrong in saying that you are parents, and perhaps even grandparents—indeed that's more likely.

An hon. member: Guilty.

Ms. Cécile Toutant: Guilty, aren't you?

So I ask you what kind of youth justice system would you like if your child or grandchild committed a violent offence. Perhaps you're thinking that couldn't happen to your family.

I've been working at the Institut Philippe-Pinel de Montréal for 40 years.To date, we've taken in more than 1,000 teenagers between the ages of 14 and 18—I haven't counted to the last unit—who had committed violent offences. We've had youths who had committed murders, some of whom are very well-known, and youths who had committed other violent acts, such as sexual assault.

I won't talk about rehabilitation right away. Instead, I'll talk about their families. It is incorrect to believe that youths who commit violent offences always come from totally disorganized families where the children aren't taken care of. That's false.

I'm deeply moved by the fact that this bill is called Sébastien's Law. The teenager who committed the offence spent a number of months in my department. Even though he of course committed a very serious act, I can tell you that, over the year and a half he spent with us, we worked with him, and there are some things that that youth achieved. In spite of that, he was sent to penitentiary to serve his life sentence.

Has the use of an adult sentence afforded better protection for society in this case? I would say no. You may have a different opinion, but I would nevertheless say no to you. It is incorrect to think that his parents didn't take care of him. I believe the parents were just as upset as a lot of people in his circle.

We should all imagine that he is our child. I'm going to tell you what I would like if my child or my grandchild was arrested. Of course, I would like people to take into account the seriousness of his act, whether he had hit or killed people. I don't think we can disregard that aspect and focus solely on the adolescent's needs. However, I would hope that his needs would be cared for and that people would take into account the fact that a teenager is not an adult, that he doesn't have the maturity of an adult, that he doesn't have the ability to judge without involving his emotions, like some adults—some adults aren't capable of proper judgment either. Teenagers in general are more emotional, and their emotional dimension takes more room. They commit extreme acts; they commit what I often call inelegant offences. An adult kills with a firearm, whereas a teenager beats up people or commits acts that make us react. We find those acts horrible. The fact is that teenagers don't commit their offences using firearms. Instead they react in an emotional situation, and they commit stunning offences.

If I had to define the youth justice system that I would like to have for my children, for Canadian children, I would ask, first, that people take greater account of the needs of adolescents when it comes to imposing measures. I would like authorities to take the offence and needs into account.

In 1993, a review was conducted of the Young Offenders Act, which had been in existence since... Pardon me, that was around the time of its creation, since it was adopted... Whatever the case may be, that act was being reviewed.

● (1145)

Under the Juvenile Delinquency Act of 1908, the justice system became a social service system. The judge became a father and determined the best measure that should be taken. At one point authorities felt that was enough and that they were going to make adolescents a little more responsible. As a result, the Young Offenders Act went into effect in 1984. At that time, we started disregarding the needs of adolescents. The authorities said they were going to make them accountable and protect the public.

In 1993, the Supreme Court rendered a judgment in what was called the JJM affair. The judges held that the needs of the young person should be considered in the placement decision, and not just the nature of the offence, even if it led to a longer sentence.

Allow me to explain. We went to the other extreme. In many cases, we realize that the measures taken are too short in duration. They are escalating measures. Young people are left in the community for a very long time. We realize that, with regard to the rehabilitation institutions that take in young people, we're waiting far too long. We let them deteriorate. The right measure has to be applied at the right time taking into account the offence committed and the needs. It is very important to take the needs into account. This implies that we should intervene properly with an adolescent who suffers from behavioural or mental health disorders.

Ultimately, what does it mean to protect the public? We're increasingly moving toward principles that advocate protecting the public. In my view, if you want to protect the public, you have to try treat the person who causes victims. If you put that person in a detention centre and try to correct his problems, you're simply going to fail.

What is an adult detention centre? I'm going to compare that kind of centre with a detention centre or rehabilitation centre for young persons. I'm going to tell you what happens in my field. The adolescents live with educators. They take part in activities with them and they meet with them. The educators are somewhat like parents. Rehabilitation is like education. Values must be communicated on a daily basis. For example, if a youth serves food at mealtimes gives all the best pieces to his friends and the rest to those he doesn't like, by not intervening, I let him exercise the power to violate, in his own way, those he doesn't like. He has power over the others. In a rehabilitation environment, we intervene in this kind of situation and we stop this type of behaviour. Rehabilitation takes place on a daily basis.

In an adult detention centre, the contrary occurs. It isn't because the people who work there don't want to do anything. They want to help the inmates, but the environment doesn't let them do it.

Let me explain. An inmate who is incarcerated in a wing with 150 inmates takes courses for an hour in the morning on how to manager his violence, on possible issues other than aggressive behaviour. He then returns to his wing, and then it's dog eat dog. There's a guard in the little glass cabin that I call an aquarium. He's in his corner and doesn't influence the inmates' daily lives.

In penitentiaries for adults, everyday life is a world of exploitation. If you doubt that, ask people who work there. They'll tell you how it works. They have every possible difficulty obtaining a therapeutic environment. The fact that anyone considers it useful for youths to be detained at adult detention centres is a mistake.

● (1150)

Youth justice must remain justice for youths; it must not be modelled on the adult system. Their needs must be taken into account.

With regard to the publication of names, is there anyone around this table who believes for two seconds that publishing the names of offenders would help them rehabilitate, that that would prevent them from reoffending? In my opinion, it's the contrary that could well occur. In many cases, the major offenders are happy to see their names in the newspaper. They score each other in a way. This is absolutely not a preventive or accountability measure.

I'll stop my presentation here. I'm going to answer any questions you may have.

Thank you.

[*English*]

The Chair: Merci.

We'll open the floor to questions. I think we'll start with Mr. Murphy for seven minutes.

[*Translation*]

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

I'd like to thank all the witnesses. Mr. Richard is with us. Here we have the report on the Ashley Smith case and that of Howard Sapers, which concerns the same case. It's good work. I want to thank Mr. Richard for that.

I'd like to make a few comments to start with.

● (1155)

[*English*]

We at the committee are struggling with what good changes to make to the YCJA. Many of them are in the Nunn commission report, which is being used as a raison d'être for the review. It's important to underline that six of the 34 recommendations dealt with toughening the YCJA, and this act addresses only some of them. That is the point of departure for the discussion here. Many of the other points are debatable and we've heard evidence on them, but I'm going get the overall view from this panel of witnesses, and I'll start with Maître Richard.

What we're not understanding as a committee so far is that there is a difference between adults and youth. It's the raison d'être for a YCJA. As Ms. Vandergrift has said, it's based on the UN convention, so we have to start with that. But evidence-based, for people here who are in the trenches.... Professor Doob has mentioned that changes with respect to specific deterrents, for instance, don't work with youth because, in his words, “they will not foresee in the same manner that an imaginative adult might the consequences of their actions ab initio”.

He also cleverly puts out the idea that individual deterrents introduced in these amendments give the false promise to the public that the judge, through sentencing, can accomplish the individual deterrents with youth, because data suggest that youth are different and don't react to specific deterrents the same way adults do.

Finally, we heard evidence that some youth might use the publication ban as a badge of courage, a badge of honour—something they like. So lifting the publication ban might in fact be inimical to the intention.

So the questions are generally on those aspects of how youth are different. What would the panel say to that?

Particularly there are two things, Maître Richard. You have said to this committee that Maître Bilodeau has done a report for the round tables that took place throughout the country. We don't have the benefit of those reports. We've asked for them, but we don't have them. If you tell me those reports have been written but not yet published or forwarded, I have a serious problem with the two parliamentary secretaries who are here as to why we don't have them. But I'll take that up later.

When you were part of that round table in August 2008 in Moncton—Moncton's the centre of most good things sometimes, I think—

A voice: Or Cap-Pelé.

Mr. Brian Murphy: Or Cap-Pelé, *peut-être*.

What were the negative points about these amendments?

Second is your work with Ashley Smith on mental health. I would like you to flesh out the good work by Judge Brien in New Brunswick and the Ontario pilot project, which the government should be encouraged to move forward with. That is specifically a youth mental health court pilot project.

Thank you.

Mr. Bernard Richard: Thank you, Mr. Chair.

I think I'll start with the last question and then I'll forget the first question, I'm sure.

I've had the opportunity to visit the Youth Mental Health Court, which is right here in Ottawa. I strongly recommend it to members of the committee, because its approach is totally different. It is funded by Justice Canada, and I have met with the presiding judge. It's just across the street from the Lord Elgin Hotel. It's not far from here at all.

The approach is multi-disciplinary and very similar to Judge Green's court in Saint John, New Brunswick, which is still a pilot project after ten years. I have regretted that publicly, that it is still a pilot project. The approach of a mental health court is of course to identify offenders who suffer from mental illness or severe behaviour disorders. They're treated in a much different way. The tendency is to divert them away from the formal criminal justice system towards treatment and support.

In Judge Green's court, for instance, 85% of those who appear before that court do not reoffend. It would be interesting to see numbers on reoffenders who are treated differently in our justice system, our more formal justice system. I would think the numbers would be much, much higher. So I think there are really, really good models out there. They're still quite new. The legislation is new, as I have said. As a former elected official myself, I've sat on several similar committees. I think it is really crucial for the members to get as much information as they can get. I sat during the consultation in Moncton. I can't say that I know what was said across the country, but certainly in Moncton, including from law enforcement officials, the idea was that what we have in place is not working. They're often at a loss. Judges have told us in our research for *Connecting the Dots* and the Ashley Smith report that they often have few options. I've expressed the concern over the fact that our New Brunswick Youth Centre has more adults than youth as prisoners, as we speak, on this day.

We're building two new jails in New Brunswick, and if you adopt these amendments I suppose we'll be building more jails. The cost will be passed on to the provinces, so in tough economic and fiscal times, provincially and federally, we'll be spending more resources in building more jails and hiring more guards to get the opposite results of what we want. I think that was expressed at the round table in Moncton. I don't know if Bilodeau wrote the report. He was acting as the facilitator, but certainly I have been told that there is a report in the hands of Justice Canada. I would think you would want to get it, to be as informed as you can be before voting on these amendments.

● (1200)

The Chair: Thank you.

We'll move on to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you very much for your presentation, Mr. Richard.

You told us that you took part in the Justice department's consultations on amendments to the Young Offenders Act. You have obviously examined the suggestions that were made to the minister. How many meetings of this type have you had?

Mr. Bernard Richard: I attended the meeting that was organized in Moncton. Mr. Nicholson went across Canada with the consultant who was hired, Mr. Bilodeau. I only attended one meeting.

I must say I've nevertheless conducted consultations with other child advocates across Canada, including Ms. Godin from the Commission des droits de la personne du Québec, and also with my colleagues from the other provinces.

Mr. Serge Ménard: When you read Bill C-4, do you feel that it reflects the consultations that you've attended?

Mr. Bernard Richard: No, certainly not mine. Based on what I heard from most of my colleagues, even though it was not the same thing across Canada, this doesn't take into account what was said by the vast majority of participants who attended the Moncton consultation.

Mr. Serge Ménard: You also told us that Roger Bilodeau was responsible for writing a summary of those consultations. Is that correct?

Mr. Bernard Richard: I want to be clear: Mr. Bilodeau acted as a facilitator at the consultation sessions. I'm not sure whether he wrote the report, but I was told by a very good source at the Department of Justice that there was a report in the department.

Mr. Serge Ménard: So there is a report, but you haven't seen it.

Mr. Bernard Richard: To my knowledge, there is a report, but I haven't seen it.

Mr. Serge Ménard: Did anyone else here attend those consultations conducted by the minister?

[*English*]

Ms. Kathy Vandergrift: I did not personally, but members of our coalition did, and that's one of the reasons they wanted us to be here today. Some of them participated in Toronto, some in B.C., and they too felt that there was a range of views in those meetings but they did not think that the predominance of what they heard in the meetings they were in went in the direction of this bill. So they also wanted us to table what we said here, which is that it would be important for you to see that.

And I would highlight as well that the developments in the field of international youth justice are based on evidence gathering. There was a conference in Brazil not very long ago looking at the very best of what's happening around the world. Justice Canada was there, and some of our members were there. There are best practices being developed elsewhere that we should be looking at and modelling so that we base it on good evidence.

We don't see that coming forward in this bill, neither the international evidence nor the evidence that came from across the country. And I can tell you that in the sessions our members were in, the focus on early preventive help was the strongest need that was there, and more services that provide the range of what young people need was the highest thing they heard.

● (1205)

Mr. Miguel LeBlanc: Our organization itself did not attend specifically, but I do know that some social workers who are our members did. However, I have to say I'm very concerned to hear that there is actually a report that is supposedly published, and the committee here, which is tasked with defining and developing new changes to amend the legislation on the Youth Criminal Justice Act, doesn't even have a copy of that.

I think it's important to say that in the front lines, among the majority, there seems to be an understanding among health professionals that just putting youth in jail and turning the key and not providing the services in front will actually be unproductive, because in the long run, when they go back into the community after they have served their sentence, if they don't have the proper services at the front end the likelihood is they may reoffend. The mental health courts' success rate, which is 85% in the sense of youth not reoffending, I think is a superb statistic that hopefully the committee will further examine closely.

Thank you.

[*Translation*]

Mr. Serge Ménard: Ms. Toutant, we were told that the minister went to consult in Quebec. He chose the significant date of June 26.

Ms. Cécile Toutant: The one that's coming up?

Mr. Serge Ménard: No, not the one that's coming up, but the one that's passed. He conducted his consultations on June 26. I imagine he likes festivals, as there are a lot of them at that time in Quebec.

Whatever the case may be, did you attend those consultations?

Ms. Cécile Toutant: No, I personally didn't attend them. I wouldn't dare say that we weren't invited. I must tell you that, in the Quebec system, the first ones called upon with regard to youth justice are, above all, the youth centres. I believe you've heard some youth centre representatives here. Perhaps they went. The Institut Philippe-Pinel has a department for young persons, but, as we're in a hospital, we're somewhat on a sidetrack at times as regards invitations.

I blame no one because I believe that, even though I didn't hear about it, I know perfectly well what the youth centres and other agencies in Quebec think about the act and what message they delivered.

Mr. Serge Ménard: Perhaps your colleagues from the other provinces should be informed on this point. The Institut Philippe-Pinel isn't an institute that focuses on young offenders. It devotes itself to anyone who has committed crimes because they suffer from mental illness. As you say, it's first of all a hospital, and as a hospital that is concerned with this type of behaviour, you also take in young people who very much need medical care.

Ms. Cécile Toutant: I would like to clarify one point. It is a secure psychiatric hospital. We take in young persons who have committed violent crimes and who have psychological or psychiatric disorders. We don't just take in youths who are suffering from schizophrenia, for example, but also a lot of young people who have control disorders, intermittent explosive disorders. In that sense, youths are not always admitted there because they have mental disorders set out in the DSM or reported through psychiatric diagnoses.

[*English*]

The Chair: Thank you.

We'll move on to Mr. Comartin for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, witnesses, for being here.

Mr. Richard, let me start with you. You're saying this bill is premature. Have you done any type of an assessment of how long we would want the law to be in place before we looked at making changes so we would know what the consequences are?

Mr. Bernard Richard: My opinion would be a minimum of ten years, followed by consultations, analysis of statistics to see what kinds of outcomes we see from the application of this bill.

I would also argue that many parts of the Youth Criminal Justice Act are really not being used effectively across the country. I know for a fact that conferencing is used very unevenly across the country, so the use of conferencing, bringing people from different disciplines and departments together to assess, for instance, youth who have mental health or serious behaviour disorders, would allow completely different outcomes. They would be tracked in completely different ways, offered services and treatments, and the results in those experiments that exist, both here in Ottawa and in Saint John, New Brunswick, certainly are quite compelling.

My concern is that we will end up spending so much money in a more formal, punitive reaction to youth crime that we will lack the resources to provide these kinds of alternate remedies, extrajudicial remedies, as they're called in the legislation.

● (1210)

Mr. Joe Comartin: Okay, let me come back to that final point in a minute.

I just want to go back, Ms. Vandergrift, to the point you made about the Convention on the Rights of the Child and the analysis that should have been done. Do you know if, in the sessions that were done in your region—and Mr. Richard, in yours, the session you had in Moncton—did anybody make any presentations on that so the justice department could take it into account? Are you aware, in those public meetings?

Mr. Bernard Richard: Certainly I would have. We work on the basis of the convention. Canada has ratified the convention.

Mr. Joe Comartin: But did you raise it in that session?

Mr. Bernard Richard: Yes, yes, absolutely.

Mr. Joe Comartin: Okay.

Ms. Vandergrift, do you know in Ontario?

Ms. Kathy Vandergrift: I'm not sure our members work on behalf of the convention, but what I'm flagging here is that when we raised the concern about how the convention is implemented in Canada, we were told an analysis is done before bills go to cabinet. You should ask to see that.

Mr. Joe Comartin: Mr. Chair, to follow up on that, can I ask you to communicate to the department or to the minister's office that if an analysis was done, the committee should get a copy of it, and if one was not done, why not?

The Chair: We'll have the clerk do that. We do need some clarification, because there is a suggestion there were consultations. There is a suggestion that there was facilitation by Monsieur Bilodeau. There is a suggestion that there may have been a written report, and then I believe Monsieur LeBlanc believes that a report was published. I don't believe it has been published. We need to get clarification on that, I agree, Mr. Comartin, so we'll get back to you on that.

Mr. Joe Comartin: I just wanted to be clear. There are two parts to this. There's the type of thing that either Monsieur Bilodeau or somebody from that group published, but there should be a separate analysis just from the perspective of how we're implementing our responsibilities under the convention on children's rights.

The Chair: We'll find out if that analysis has been done and if it's been published.

Carry on, Mr. Comartin.

Mr. Joe Comartin: Ms. Vandergrift wants a copy of it if we get it.

A voice: We all do.

Mr. Joe Comartin: Monsieur LeBlanc, you mentioned the need for additional resources if this goes through. Have you done any analysis of how many more youth offenders will be incarcerated, just in your province, and how many more jail cells or incarceration locations you will need as a province?

Mr. Miguel LeBlanc: The short answer is no, we didn't do an analysis. However, if this is passed, the result will be more punitive, which will result in more youth being in prison. As we can see from the Ashley Smith report, this young person was transferred all across, right? I think it's fair to say there will be an increase somewhere, and that would mean—

Mr. Joe Comartin: Could you even give me an estimate on a percentage basis? Is it going to go up 5%, 10%, the incarceration?

Mr. Richard?

Mr. Bernard Richard: I couldn't give an estimate. I think that's too hard for me to do, and I'm not that kind of researcher. But I do want to confirm for the chair, there were consultations. I was there. Mr. Bilodeau, who was there as well, was facilitating, so I'm clear on those two.

On the third point, someone in my office spoke to a Justice Canada official two days ago, and it was confirmed to him that there is a report, but it has not been published or been made public.

[*Translation*]

Mr. Joe Comartin: Ms. Toutant, I'm asking you the same question.

Is it possible to determine how many offenders there could be in Quebec's prisons if this federal bill were adopted?

Ms. Cécile Toutant: I don't think I can give you a figure. Moreover, in actual fact, I don't think adult sentences have been extensively used. That's one of the reasons why we wonder why the act currently in effect has to be amended.

Earlier, I spoke a little about the fact that it's called Sébastien's Law, to illustrate a situation in which the court decided to give an adolescent an adult sentence. It should be recalled that, in Quebec, the minimum age is 16, not 14. I'm very sensitive to the argument by the lady who talked about fairness for all children in Canada. In the other provinces, I believe an adolescent can be subject to an adult sentence at the age of 14. I believe you're aware of that. In Quebec, it's at the age of 16, because Quebec's National Assembly made that decision. There is the possibility, and, in my view, it must be limited as much as possible.

I just have one brief comment to make. I'm very concerned when authorities say they may perhaps place inmates who are not adults in a separate wing of the adult prison. In other words, they're going to subject young persons to that. We're going to place them in adult institutions, but set them up in a separate wing. It is very important to recall that a rehabilitation environment is not a detention environment. We detain youths in order to rehabilitate them, but it's not just a detention environment. And it's not because they're going to be separated from the others that they will be treated differently. I don't know whether you understand the distinction. It's very important in my mind.

● (1215)

[*English*]

The Chair: Thank you.

We'll move on to Monsieur Petit, for seven minutes.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you. I'm going to share the time allotted to me with Mr. Dechert.

Mr. Richard, we have very little time. You're the ombudsman in New Brunswick, isn't that correct? Are there a lot of provincial ombudsmen in Canada apart from you?

Mr. Bernard Richard: Yes, there are ombudsmen in all the provinces. In Quebec, it's called the "protecteur du citoyen". They have them in all the provinces, except Prince Edward Island and the Yukon.

Mr. Daniel Petit: Earlier you raised an extremely important point, and I believe we've been hearing the same argument from the start. You and the witnesses as a whole always use the term "mental illness". You talk about a youth who is suffering from a mental illness.

Does that mean that when the judges in New Brunswick send people to prison rather than to a psychiatric asylum?

Mr. Bernard Richard: That definitely happens. The research findings are clear: increasingly, not only the young population, but also the adult population—

Mr. Daniel Petit: But I'm talking about what happens in your province. My time is very limited. Does that mean that, when a psychiatrist tells New Brunswick judges that a youth is suffering from a mental illness, they send that young person to prison rather than to a psychiatric asylum?

Mr. Bernard Richard: It happens across Canada, sir, not just in New Brunswick.

Mr. Daniel Petit: I'm talking about in New Brunswick. You have the expertise with regard to what happens there.

Mr. Bernard Richard: I work right across Canada; I have colleagues across Canada. I'm not just a child advocate, but also an ombudsman, or "protecteur du citoyen". My field unfortunately extends from the cradle to the grave. But, since there is a shortage of mental health services—that was clearly established by Mr. Sapers as well in the case of the federal prisons—there are increasing numbers of inmates suffering from mental health problems in our prisons. The findings are clear: we are unable to offer the services they need, as a result of which they reoffend.

Mr. Daniel Petit: Have you intervened personally? You have the right as ombudsman—the act allows you to do so—to intervene in court and to say that a young person won't go to prison, but rather to a psychiatric asylum. Have you intervened personally in a number of cases, and what was the result?

Mr. Bernard Richard: Yes, and the judges listened to us when we intervened. Yes, absolutely, lawyers from my office and myself have appeared in youth courts, in particular, to make that kind of recommendation.

Mr. Daniel Petit: Earlier, you cited an example that you had learned about. The Institut Philippe-Pinel de Montréal is a hospital. You subsequently talked about a court that you yourself had visited, the mental health court. You used that term—I don't know whether the translation was accurate—and you said you had visited a mental health court in Ottawa.

Mr. Bernard Richard: It's a criminal court. It's a pilot project funded by the Department of Justice. I spent half a day there and I met the judge, the defence lawyers, the Crown prosecutors, social workers and other caseworkers in that court.

Mr. Daniel Petit: Were you satisfied with what you saw?

● (1220)

Mr. Bernard Richard: The approach is multidisciplinary. Obviously, you first have to target the youths who have mental health disorders or acute behavioural disorders and direct them to services and treatment rather than proceed with their incarceration. I'm told it works.

Mr. Daniel Petit: You say that, currently, even though the judges have a person suffering from mental illness before them, they send him to prison rather than to a psychiatric asylum.

Mr. Bernard Richard: It must be understood that the same services don't exist at the same level in Canada. For example, in New Brunswick—I'm quite familiar with the situation in my province—there is a psychiatric hospital in Campbellton. There's also a psychiatric unit for young persons in Moncton, but, very often, there isn't enough room. There aren't any specialized services. Furthermore, we've recommended that a specialized centre for mental health and psychiatric services be established for youths in New Brunswick because our youths are currently being sent to Toronto and even to Portland, Maine, to another country, to obtain services at a very high cost. There often aren't enough services, and not even the right services in New Brunswick. That's an enormous concern for me.

Mr. Daniel Petit: So if you had the services you referred to from the start and the money to provide them, would you feel that the current act is all right? If we really put the young people in the right place, that is in a psychiatric asylum rather than in prison, would you be in favour of the act?

Mr. Bernard Richard: I think that the act, as it currently stands, would be more effective if there were screening services. First, it would be necessary to target the youths who have these specific needs. Then there would have to be effective ways of intervening in terms of treatment for those youths.

Mr. Daniel Petit: However, you're aware that the Young Offenders Act currently allows the court to say that, if a youth is suffering from mental illness, he may be placed in a psychiatric asylum. You're telling me that judges don't do that, but that they send them to prison instead.

Mr. Bernard Richard: In fact, judges often don't have a lot of options because, in certain regions of Canada and in certain provinces, the services simply do not exist. The act obviously allows considerable flexibility. I think that's the entire advantage of this act. It provides very significant benefits.

If you adopt these amendments, my concern is that we'll be investing more in infrastructure, in prisons, rather than in the services that are currently lacking.

[*English*]

The Chair: We have one minute left, Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Very quickly, Mr. Richard, you mentioned Ashley Smith, and I think we all have sympathy for what happened to that young woman and sympathy for her family. Was she what you would describe as a serious or violent repeat offender?

Mr. Bernard Richard: I wouldn't describe her as that. She was a very, very troubled youth—

Mr. Bob Dechert: But not a violent offender.

Mr. Bernard Richard: Most of her violent behaviour was inside the prison.

Mr. Bob Dechert: Right, okay. So would any of the provisions of Bill C-4 that we're reviewing in this study have applied, in your opinion, to Ashley Smith?

Mr. Bernard Richard: If we don't address the real problems, the lack of mental health and—

Mr. Bob Dechert: I understand. I take your point on that. That's fair. But would any of the provisions being suggested by this bill have applied in her case, in your opinion?

Mr. Bernard Richard: I don't....

Would you say...?

The Chair: Could we make sure that if the question is directed to one witness to let him answer?

Mr. Bernard Richard: It's hard for me to answer that, but certainly—

Mr. Bob Dechert: Can you give us a yes or no?

Mr. Bernard Richard: I can't say yes or no.

Mr. Bob Dechert: Okay, you couldn't take us through any of those provisions and say how one might apply to her.

Mr. Bernard Richard: Not the specific provisions—

Mr. Bob Dechert: You didn't look at that. You didn't look at her case and compare it to any of the changes that have been suggested in the current bill.

Mr. Bernard Richard: The problem with Ashley's case is that there was an absence of mental health services, and I think that—

Mr. Bob Dechert: I understand that point.

The Chair: Thank you. We're out of time.

We'll start the second round of five minutes.

Mr. Murphy.

Mr. Brian Murphy: There are a lot of technical aspects to this bill, and we're going to work our way through them, but we had in camera—not to get into it—testimony from a judge who deals with this. One of the concerns I was left with after listening to him was that judges are going to have a key role in whatever amendments are made to this bill.

You might as well start with the declaration. I have what I hope is a simple question, with a brief preamble, on section 3, which is the declaration of principle, the overall road map for the act.

It seems to me that the act as is states some principles that probably most of the panellists agree with. Justice Nunn has suggested that the government should add a clause indicating that protection of the public is one of the primary goals of the act. The government went right into third gear and said it's the overriding principle of the act.

I want to ask each of the witnesses what they think of this. If we moved from section 3 as it exists—which says that the purpose of the act is to prevent crime, rehabilitate young persons, and ensure that young persons are subject to meaningful consequences "in order to promote the long-term protection of the public"—into making protection of the public one of the primary goals along with the three that I just mentioned, could you live with it? Secondly, do you think the government has gilded the lily and gone a little too far in trying to make it the overwhelming, overarching principle of the act?

We'll start with Mr. Richard.

● (1225)

Mr. Bernard Richard: I think it's contradictory with the existing legislation; it's a totally different approach. I think we're going backwards, back to the "young offenders" approach, which allowed us to have an extremely high incarceration rate of youth as compared with other advanced, civilized, developed nations.

There is a contradiction in terms there. Unfortunately, it takes us in the wrong direction. In my view, it will lead to the expenditure of more resources, infrastructure, and incarceration, without providing us the results we're looking for—we're all looking for the same results—less crime.

Mr. Brian Murphy: But could you live with the minor ratcheting up that Justice Nunn suggested by moving it from "in order to promote" to "one of the principles", along with prevent, rehabilitate, and "subject to meaningful consequence"? Could you live with that?

Mr. Bernard Richard: I think it's really going in the wrong direction, and I don't think it's the purpose of a youth criminal justice act. Within the existing legislation there are ways to address the concern of public safety. I think one of the members said that there is considerable flexibility for judges in what they can do, and there is some flexibility for the crown in how they can pursue criminal acts by young persons. That already exists in the legislation. This is overkill, in my view.

Mr. Brian Murphy: I guess we have about 30 seconds each, if you could respect that.

Ms. Kathy Vandergrift: I would highlight that the Nunn commission talks about short- and long-term protection. I think that's important, if it is added. Also, there were two recommendations in the Nunn commission report, which are not considered at all, that relate to that. I think they're very important, because they talk about other duty bearers.

I think that adding it as one, but reflecting the whole Nunn commission view, could be tenable.

I'm most concerned about the rewriting of how we understand accountability and prevention. The rewrites are unacceptable.

Mr. Brian Murphy: In your presentation, I wasn't clear whether you think there was an analysis of Bill C-4 done by the Department of Justice with anyone in government with respect to how it complies with the Convention on the Law of the Rights of Children.

Ms. Kathy Vandergrift: I'm not going to say whether one was done. I can tell you that the government told us they do it. We're not convinced that they do it, and it has not been made public.

Mr. Brian Murphy: Thank you.

How much time is left?

The Chair: There's one minute to split between the two groups.

Monsieur LeBlanc.

Mr. Miguel LeBlanc: Thank you.

Overall, putting more youths in jail in the name of preventing and reducing crime is not going to be the solution at all, because they will come out and they will reoffend. We need to provide services right from the get-go or once they are serving a sentence.

We're concerned with the changes that are going on. I think it is the wrong direction to go in. The Youth Criminal Justice Act as written may have some difficulties, but I think it's an appropriate measure that can be worked within. Rewriting it at this time is the wrong approach.

[*Translation*]

Ms. Cécile Toutant: In fact, we're talking about protection of the public, not sustainable protection. We want the notion of sustainability to disappear from the old act. In my view, it helps determine whether, with time, the person will reoffend and whether we establish the means to ensure that person does not. That notion took into account the need to do something for the person. In my opinion, the fact that we are abolishing the notion of sustainable protection is a major change. It gives us an idea of the tone the government wants to give to the act.

● (1230)

[*English*]

The Chair: Thank you.

We'll move on to Monsieur Lemay for five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Ms. Toutant, I read your brief. It's very interesting. However, I would like to know what you mean when you say that it may be stunning for young offenders to commit high-profile offences.

Ms. Cécile Toutant: I mean that, based on my experience, young persons who commit murder, for example, kill in two or three ways. They seem to completely lose control. I know it's a bit macabre to discuss this subject, but, in some cases, young persons inflict 70 knife blows, which virtually never occurs among adults. They adopt must "cleaner" ways of committing their offence because they are usually more organized. On the other hand, an adolescent who kills in a explosive state or a state of personality disorganization commits offences that are at times harshly and weirdly impressive.

I've treated a number of adolescents who killed their parents. I won't give you any details. It's very impressive. When you see those kinds of things, you think it's really terrible. It's true, but it indicates that there's a distress behind all that and that it has to be addressed.

Mr. Marc Lemay: In other words, that means better newspaper sales. So it's very impressive in media terms. It's very populist, of course, it's used to stimulate public interest. A crime such as the one in which 70 knife blows were inflicted is much more high-profile than a murder in which only one rifle shot was fired. The person thinks that the problem will be solved, that the victim will die.

Ms. Cécile Toutant: That's a good comment. I admit I've never made it myself. It sells newspapers, indeed.

Mr. Marc Lemay: You referred a number of times to rehabilitation on a daily basis. I'd like you to tell me what you mean by that.

Ms. Cécile Toutant: I want to give you an example of what happens in the area of education. No parent would imagine sitting a child down for an hour a day to tell him what he must do and not do, then, for the rest of the day, doing the opposite of what he has taught him to do. Parents intuitively know that a child learns from what we do, not from what we say.

When a parent tells his child to do something whereas he does the contrary, we can tell him: "Practice what you preach." We sometimes use that English expression in Quebec. In that sense, education or rehabilitation on a daily basis is done in an environment organized around certain values, in particular mutual respect, non-exploitation and respect by staff toward the adolescents. It isn't always easy. We talk a lot about rehabilitation, but it isn't easy to put it into practice.

Mr. Marc Lemay: I don't want to interrupt you. You're right. However, my colleagues opposite are very sensitive to the fate of victims.

In everyday rehabilitation, what room do you think is made for the victims?

Ms. Cécile Toutant: The young persons usually talk about their victims after a while. I'm going to give you two examples. The victims sometimes are family members. Earlier we talked about mental illness in young persons. If I have time a little later, perhaps I could address that notion. It isn't always clear with adolescents.

Mr. Marc Lemay: Perhaps you can come back to that.

Ms. Cécile Toutant: Let's get back to the victims.

The victims are sometimes family members, and, in that case, we work with them. When the victim is outside the young person's network, he or she doesn't always want to work with us. Like a lot of people, they think that, if we're working with the assailant, we're against the victim, which is false. When he's better, the young person, who selected his victim for certain reasons, feels bad about what he's done. We review that with him, and he tries to make restitution for his actions.

I have adolescents who, through their lawyers, who are more neutral, try to contact the victims without scaring them. You know, when I phone victims to tell them, for example, that I have a youth who has been here for three years and who very much regrets what happened and would like to talk to them, they don't all accept. We're very sensitive to that. We do it through lawyers; we ask the person whether he or she wants to get in touch with the assailant. The victim isn't disregarded, particularly since they are the symbol of what wasn't going right with the youth, in view of what has happened.

● (1235)

[*English*]

The Chair: Thank you.

I will move on to Mr. Woodworth for five minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): *Je vous remercie beaucoup, monsieur le président.*

Thanks go to all of the witnesses for being here.

There is so much I would like to say in so little time. I'll begin by simply saying that I want to reassure the witnesses that every member of this committee received a report on the national invitational symposium on youth justice renewal. Indeed, it was a detailed report that indicated the number of participants, the process, the identification of issues, gathering of evidence. I'm sure not all of us have had time to read it yet, but I assure you that I have and I found many ideas in it that I hope I to ensure will find their way into the report of this committee, or at least the discussion of this bill.

Secondly, I would like to point out, for anyone here who was listening earlier, that if you look at the existing Youth Criminal Justice Act you will see that it already includes as a principle the promotion of the protection of the public. That is not something new that is being added by Bill C-4; nor does Bill C-4 give it any greater priority than it had in the previous act.

[*Translation*]

Ms. Toutant, I would like to thank you. I thought your presentation was balanced. I don't agree with everything you've said, but there are at least two things on which I agree.

First, in your brief, you say: "Young people are now being placed for such short periods that any effort at rehabilitation becomes impossible." That's true and that's clear. You also say: "Yes to a return to a better balance between the importance attached to the offence, and the needs and personality of the young person." That's also true and clear.

[*English*]

I regret that I have so little time. I want to direct some questions to Ms. Vandergrift, because I sit here day after day, hour after hour and I listen often to people say things that I know are not really correct. It's not fair in a way, because I'm a lawyer and I have access to resources, and others don't.

I want to begin by asking you, are you a lawyer, Ms. Vandergrift?

Ms. Kathy Vandergrift: No, I am not, but some members of our coalition are.

Mr. Stephen Woodworth: Okay. Do you have in front of you a copy of Bill C-4, by any chance?

Ms. Kathy Vandergrift: I don't have it in front of me, but I did read it.

Mr. Stephen Woodworth: All right.

I'm just going to ask you to do a little homework with your lawyers, because in your written statement, for example, there is a sentence that suggests that Bill C-4 is adding denunciation and deterrence and giving them priority over rehabilitation and best interests of the child.

I have in front of me the provision of Bill C-4 that adds denunciation and deterrence. That's clause 7 of Bill C-4, and it adds those things to section 38. In fact, it adds them to five other principles and it doesn't give them priority. In fact, it specifically says they will be subject to one of those other five principles.

So I would like you to go back to the people who wrote this brief and ask them to refer this committee specifically to the provision in Bill C-4 and the words in that bill that they say give priority to denunciation and deterrence, because I think if you do that you will find that there is no such thing in Bill C-4.

● (1240)

Ms. Kathy Vandergrift: With respect, we did not say anything about denunciation and deterrence being given priority. Our statement about denunciation simply says, “No evidence has been presented to show that deterrence is an effective strategy”, and we said that adding denunciation does not seem to us to be consistent with the recognition of reduced moral blameworthiness.

We never talked about them being given priority. We never—

Mr. Stephen Woodworth: Are you representing the Canadian Coalition for the Rights of Children?

Ms. Kathy Vandergrift: Yes, and we did not say that denunciation was being given priority.

Mr. Stephen Woodworth: Let me read to you from page 2 of the brief:

> As well as questions of effectiveness, the CCRC asks all MPs to consider that the following principles are contrary to international law and violate their responsibility to protect the rights of young people:
>
> - adding denunciation and deterrence to sentencing principles for children and youth under 18 years of age, and
>
> - giving them priority over rehabilitation and best interests of the child;

Am I out of time already?

The Chair: Yes, unfortunately you are.

Ms. Kathy Vandergrift: Well, I would like to connect with you later, because that's not—

The Chair: All right. You can connect afterwards. Hopefully we'll have another round of questions.

Monsieur Lemay, on a point of order.

[*Translation*]

Mr. Marc Lemay: Mr. Chairman, I'm speaking to Mr. Woodworth.

You referred to a report that committee members should have. We don't have it. I never received it. Could you give the reference to the clerk?

[*English*]

Mr. Stephen Woodworth: Yes, Mr. Chair, this was received by way of the Child Welfare League of Canada and it is a report on the national invitational symposium on youth justice renewal.

I received it from the clerk. I regret I didn't keep the cover letter, but it was just a week or two ago, I'm sure, after the Child Welfare League testified.

[*Translation*]

Mr. Marc Lemay: Madam Clerk, you'll check?

Thank you, Mr. Chairman.

[*English*]

The Chair: Thank you for that point of order.

Mr. Brian Murphy: On the same or a different point of order, I think it's a significant point. I was led to believe that you received the report resulting from the round tables across the country that Mr. Richard referred to. That's what I thought as well.

You're making it very clear that you are not in possession of any report from the Department of Justice on the round tables. Correct?

Mr. Stephen Woodworth: What I said was that each one of us received a report on the national invitational symposium on youth justice renewal.

Mr. Brian Murphy: It sounded like it was government, but to be clear, you got no government report, right?

Mr. Stephen Woodworth: This report was commissioned by the government. The background of it indicates:

> The Canadian Association of Chiefs of Police (CACP), working in partnership with the Child Welfare League of Canada (CWCL) and on behalf of the Coalition on Community Safety, Health and Well-being, entered into a contribution agreement with Justice Canada on 19 March 2008 to convene the National Invitational Symposium on Youth Justice Renewal.

Thank you.

Mr. Brian Murphy: Is that the report that emanates from the government as a result of its round tables in Moncton, New Brunswick, in August 2008, for example?

Mr. Stephen Woodworth: This is the report of the national invitational symposium on youth justice renewal—

Mr. Brian Murphy: It's not the same.

The Chair: For clarification, I don't believe it is the same. Certainly I'm not in possession of the report regarding the consultations, and the clerk isn't in possession of any report like that.

Mr. Brian Murphy: On a point of order—

The Chair: I think we've clarified that.

Mr. Woodworth.

Mr. Stephen Woodworth: I'm not sure we've clarified it, because I didn't mean to say anything more than what I did say, which is that we all have received a report of that national invitational symposium. It brought people together and came up with good ideas. It's not as if we're working in a vacuum. That's all I meant to say and it's all I did say.

The Chair: Understood. I think we all understand that.

All right, we're going to move to our next round.

Ms. Mendes, are you taking the next round?

Mrs. Alexandra Mendes (Brossard—La Prairie, Lib.): Mr. Murphy is. I'll have one question at the end.

The Chair: You have a total of five minutes.

Mr. Brian Murphy: I'll be brief. I did ask a broad question of everyone last time, but let's dig down on some of the specifics, particularly the lift of the publication ban.

We've had some evidence that this might be a good thing because it warns the public of dangerous, repeat, serious youth offenders in communities. That is something we have to balance, as a committee. We've heard this will very much go against the idea of rehabilitation—reintegration in particular. We've even heard that it might be seen as a badge of honour and courage among youth, particularly those involved in gangs, and it might be inimical to the aims of the act.

I'd like to have each of your comments. In fairness, not to look too New Brunswick-centric,

[*Translation*]

I'll first let my colleague from Quebec respond.

● (1245)

Ms. Cécile Toutant: A number of you speak French; that's nice.

You say you've heard people talk about the positive effects of publishing names, but I admit I don't see any point in it. Instead I see the problems that can cause.

When a young person is arrested and lives near the place where he committed his offence, getting his name in the newspaper is very important. I would say it's not only valued by youths who have never had any place in their world, who have always been rejected. I'll cite the example of young people who have been rejected everywhere as a result of their characteristics—I'm not saying they're only victims. They are rejected all their lives for who they are, and, at one point, they see their names in the newspaper. For them, that's a good thing.

I only see the negative effects of publishing the names of young persons in the newspaper. One day I'd like to hear, perhaps from you, what positive aspects you've heard of. The young persons I know, when they act, don't think about what will happen afterwards. I approve of the comments by Anthony Doob, to whom you referred earlier; that's absolutely right. Most of the time, young persons are very impulsive; they act and think afterwards.

[*English*]

The Chair: Ms. Mendes.

[*Translation*]

Mr. Brian Murphy: How much time do I have left?

[*English*]

The Chair: You have 2 minutes and 15 seconds.

[*Translation*]

Mr. Miguel LeBlanc: I'd like to raise two points.

[*English*]

First, you are setting up the youth who have served their sentence for failure once they get out of the institution. I was mentioning that youth do not necessarily understand the long-term consequences. If we try to rehabilitate youth to once again become productive members of society, to get employment and contribute to our local economy, etc., I can't understand the rationale that publishing their names will be helpful.

The other point is that I can't honestly comprehend how publishing the name of a young person will deter other young people from doing crime when their emotional maturity level is not the same as an adult. Unfortunately, they don't understand the long-term consequences for their actions and so forth, and they believe it may not happen to them.

I'm trying to understand the rationale. I don't believe it is in the best interests of the young person nor the community in the long term. I don't believe that their names should be published, not at 12 years old or 14 years old. We're talking about kids here.

Ms. Kathy Vandergrift: In addition to contravening their best interests, where there are concerns about safety and it involves young persons, surely there are other kinds of strategies that could be looked at. If there is a legitimate concern in a particular case about short-term protection, other strategies could be considered.

The work in the field is going toward what the best practices are and that balance, and that's where we'd like to see our attention.

Mr. Bernard Richard: In my view, none of these things—publishing the name, adding denunciation and deterrence, providing for more pre-sentence detention of youth, and most of the amendments that are proposed—will do anything to address or to change the impulsive, irrational, often reckless behaviour of teenagers. I'm not convinced, at all, that it will bring us to where we want to be as a country, with a lower crime rate.

I think we can do much better. It takes more of a long-term view, I agree, and often that's not easy. We're much better if we invest the same kinds of resources in addressing those youth who are suffering from mental illness, severe behaviour disorders, or addictions, and I would wager that accounts for a very large proportion of youth crime.

● (1250)

The Chair: Thank you.

I will move on to Mr. Dechert for five minutes.

Mr. Bob Dechert: Thank you, Mr. Chair.

Ladies and gentlemen, when I began my questions earlier I was short of time so I didn't have an opportunity just to thank you all for sharing your views with us today. So I wanted to make sure I had a chance to do that.

I'd like to ask some questions to Madame Toutant. Madame Toutant, when do you think most young people become morally responsible for their crimes, for their actions, and if they are involved in crime, for that crime? At what age would you say they become morally responsible?

Ms. Cécile Toutant: I don't think I can answer with an age. It depends on the work done with them. I would say they're learning to be responsible.... I'm answering in English; I didn't notice.

[*Translation*]

The purpose of the work we do with young persons is precisely to make them responsible for their behaviour. First, we try to make them realize what makes them act, what the dynamic is behind their aggressive behaviour or their lack of respect for others.

When we teach someone the reasons for his behaviour and show him how to be more responsible, I believe that, at the end of the process, that person is more responsible. Is there an age at which that's apparent? I would say we become a little more responsible every day of our lives. That's true for everyone.

[*English*]

Mr. Bob Dechert: Okay, fair enough. Our legal system draws a line at the age of 18. Do you think that's an arbitrary age? Would you say there are some 17-year-olds who are morally responsible for their actions and there are 19-year-olds who are less morally responsible because of the individual development of those persons?

[*Translation*]

Ms. Cécile Toutant: I believe there's something arbitrary about every decision with regard to age; that's obvious.

At one point, I believe most people who are concerned with the development of human beings have shown that 18 is the average age at which a larger number of individuals are slightly more responsible than at a younger age. You ask me whether there are any 19-year-olds who are less responsible than 17-year-olds. I would say we have to consider that on an individual basis, when we talk about needs.

That said, an age had to be established in the act. If you visited a penitentiary tomorrow, you would find adults who are still irresponsible, but they may constitute a minority.

[*English*]

Mr. Bob Dechert: Is 18 the right number at which to draw the line, in your view?

Ms. Cécile Toutant: I never asked myself that question, I have to tell you. I think it is. I think that at one time a lot of people decided that people are more mature usually when they're a little older, so they set the age at 18.

Mr. Bob Dechert: Okay. I believe you mentioned earlier that you may have dealt with one of the perpetrators in the death of Sébastien Lacasse. I know that one or two people have mentioned that perhaps because this Bill C-4 is dedicated to the memory of Sébastien Lacasse, that was inappropriate. Is that true? Did I hear you correctly? Did you deal with one of those perpetrators?

Ms. Cécile Toutant: Yes.

Mr. Bob Dechert: Okay. Do you feel that this person received the appropriate sentence?

Ms. Cécile Toutant: That's a very good question. I think he could have been dealt with in the juvenile system. He has been condemned under the adult law.

Mr. Bob Dechert: What role did that person play in the death? Do you remember?

[*Translation*]

Ms. Cécile Toutant: I know the role that adolescent played, but today I don't want to give out any details about his life. What I wanted to say is that the Youth Criminal Justice Act permits a 10-year placement—you're aware of that. When a murder has been committed, a 10-year sentence is possible, that's to say 6 years of custody and 4 years of follow-up.

You asked for my opinion, and I'm giving it to you. Personally, after assessing that young person, I believe the youth justice system could very well have taken charge of him because we had already started to work with him in accordance with that system, in which he had questioned some things.

Unfortunately, at a certain age, under the act, we had to transfer him to a penitentiary. I think he's doing all right. However, the danger for a young person who enters a penitentiary is always that he may resort to his tougher side, and say to himself that he doesn't want to be a victim in that environment. That's a very present danger.

● (1255)

[*English*]

The Chair: Thank you.

I'm just advised that the report that Mr. Woodworth was referring to and was inquired about by Monsieur Lemay was sent out the beginning of June. The report was issued by the Coalition on Community Safety, Health and Well-being, and it's entitled *Report on National Invitational Symposium on Youth Illicit Substance Abuse and the Justice System*. It has nothing to do with the consultations that took place.

We have room for one final question. Yes, we do have time.

Mr. Dechert.

Mr. Bob Dechert: Thank you.

I wanted to ask a question of Ms. Vandergrift.

Ms. Vandergrift, you referred to the Convention on the Rights of the Child. In your view, does the Youth Criminal Justice Act, as currently drafted, comply with the requirements of the Convention on the Rights of the Child?

Ms. Kathy Vandergrift: Not entirely, and that would probably be a more detailed analysis, but it certainly took a strong step forward in that direction. So we were supportive when those steps were made.

Mr. Bob Dechert: Okay. I think you mentioned that the United Nations made a recommendation to Canada in 2003. Is that correct?

Ms. Kathy Vandergrift: In 2003 the UN Committee on the Rights of the Child made a number of recommendations to Canada to better implement the convention, including recommendations for the youth justice system. We would like to see Canada respond to those recommendations. It has not done so in its third and fourth reports.

Mr. Bob Dechert: So the United Nations responded to the Government of Canada in 2003, or made that recommendation.

Ms. Kathy Vandergrift: That is correct.

Mr. Bob Dechert: Did your organization make any recommendation at that time or subsequently?

Ms. Kathy Vandergrift: We did. We were part of those hearings at the UN committee.

Mr. Bob Dechert: I'm sorry—in that same year, 2003?

Ms. Kathy Vandergrift: Yes, 2003.

Mr. Bob Dechert: So the government of that day was in receipt of your recommendation—

Ms. Kathy Vandergrift: That is correct.

Mr. Bob Dechert: —that the YCJA should be amended, but they didn't, in fact, do that, did they?

Ms. Kathy Vandergrift: That is correct.

Mr. Bob Dechert: Okay, thank you.

The Chair: Thank you very much.

Just for clarification, the name of the report I referred to is *Report on National Invitational Symposium on Youth Justice Renewal*. Mr. Woodworth asked us to clarify that.

I wanted to thank the witnesses for appearing before us today. Your testimony is helpful as we move forward in our consideration of Bill C-4.

Thank you.

We're adjourned.

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